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PATENT APPLICATION
Do. No. 1482-132

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Barrie Gilbert

Serial No. 09/545,691 Examiner: Philip Sobutka
Filed: April 7, 2000 Group Art Unit: 2683
For: RF MIXER WITH INDUCTIVE DEGENERATION
Date: November 26, 2002

Attn: Board of Patent Appeals and Interferences
Commissioner for Patents and Trademarks
Washington, DC 20231

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PETITION TO REOPEN PROSECUTION

Applicant petitions the Commissioner to reopen prosecution in the above-referenced patent application on the basis that the Examiner's Answer to Applicant's Appeal Brief contains an impermissible new ground of rejection, and Applicant has not been given a fair opportunity to react to the rejection. These circumstances are appropriate for invoking the Commissioner's supervisory authority under 37 CFR 1.181(a)(3). See MPEP 1208.01, last paragraph.

Factual Background

On December 20, 2001, a Final Office Action (copy attached as Exhibit A) was mailed in the above-referenced application. In the Final Office Action, the Examiner rejected claim 15 under 35 USC 103(a) as being unpatentable over U.S. Patent No. 5,789,799 to Voinigescu et al. ("Voinigescu") (copy attached as Exhibit B) in view of U.S. Patent No. 5,307,512. In setting forth the reasons for the rejection, the Examiner alleged that the first and second class AB input stages recited in claim 15 read on transistors Q3 and Q1, respectively, of Fig. 9 of Voinigescu.

On January 16, 2002, the Examiner and Applicant's attorney conducted a telephonic interview during which no agreement was reached as to claim 15, but Applicant was invited

to submit a formal response presenting arguments as to why claim 15 distinguishes over the prior art. See Interview Summary dated January 25, 2002 (copy attached as Exhibit C).

On February 14, 2002, Applicant filed an Amendment After Final (copy attached as Exhibit D) arguing against the Examiner's interpretation of Voinigescu.

On March 26, 2002, an Advisory Action (copy attached as Exhibit E) was mailed indicating that Applicant's arguments were found unpersuasive.

Applicant timely filed a Notice of Appeal, and on August 9, 2002, Applicant filed an Appeal Brief (copy attached as Exhibit F) again arguing against the Examiner's interpretation of the Voinigescu reference with respect to the language of claim 15.

On September 26, 2002, an Examiner's Answer (copy attached as Exhibit G) was mailed in which the Examiner noted that typographical errors were made in the Final Office Action. For example, specifically, the Examiner noted (at page 5, first paragraph) that his intention was to allege that the first class AB input stage recited in claim 15 read not on just transistor Q3 of Fig. 9 of Voinigescu, but rather, on *the combination of transistors Q3 and Q6*. Likewise, the intention was to allege that the second class AB input stage read not just on transistor Q1 of Voinigescu, but rather, on *the combination of transistors Q1 and Q2*. The Examiner then advanced additional arguments based on this new interpretation.

Argument

37 CFR 1.193(a)(2) prohibits entry of a new ground of rejection in an examiner's answer. Although the statutory basis and the evidence relied upon in support of the rejection remains the same in the Examiner's Answer, the basic thrust of the rejection has changed appreciably such that Applicant has not been given a fair opportunity to react to the rejection. See MPEP § 1208.01, second paragraph, and cases cited therein.

In the Examiner's Answer, the Examiner is advancing a new interpretation of the prior art that is significantly different than the interpretation set forth in the Final Office Action. Applicant should be given an opportunity to submit additional evidence that refutes this new interpretation.

The Examiner seems to allege that Applicant should have realized what the Examiner actually meant, noting that Applicant correctly inferred that the Examiner's reference to "IF" in the Final Office Action actually referred to "IF+" and "IF-". See page 5, end of first paragraph of Examiner's Answer (Exhibit G). However, the fact that Applicant was able to accurately divine the Examiner's intention with respect to one typographical error should not

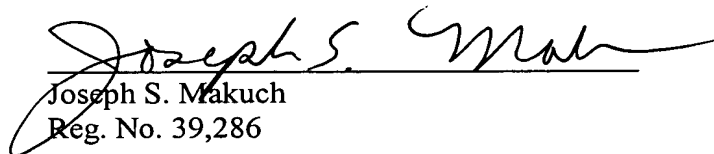
be held against Applicant in the face of numerous other errors that rendered the Final Office Action incomplete and unclear.

Conclusion

Applicant requests that prosecution be reopened in the above-referenced patent application to give Applicant a fair opportunity to react to the grounds of rejection.

Respectfully submitted,

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